

Stereotypes and the Bottom Line: Learning Lessons from Gender Based Firing Discrimination Cases

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Given the conventional interpretation that Title VII of the Civil Rights Act and the Equal Pay Act are meant to grant fair institutional access and wages (Blankenship 1993; Kauffman, Miller, and Ivey 1995), the abundance of contemporary research devoted to hiring and wage inequality is not surprising. Moreover, the surge of empirical attempts to explain the persistence of promotion inequality (e.g., Baker 2003; Maume 1999) is also warranted. But with most attention focused on the injustice in who enters, who rises, and who gets paid, little is known about firing inequality (Petersen and Saporta 2004).

Employer gate-keeping of internal personnel documents and few reliable data sources on firing may provide a partial explanation for why research on firing inequality is so scarce. Nevertheless, studies that explore the dynamics of firing inequality are sorely needed in light of aggregate evidence that firing discrimination is among the most prevalent forms of employment litigation (Donohue and Siegelman 1991; Roscigno 2007). To add to this urgency, continuing declines in union membership (and protection) to less than 10% of the private sector workforce (U.S. Census 2004) and the default employment-at-will doctrine (Grenig 1991) in many of these jobs may foster contexts where the subjective firing of employees goes unchallenged in thousands of cases.

Indeed, there is some research on inequality in job exits. But existing studies either aggregate job separations (e.g., layoffs and firings) under the label of involuntary

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job dismissals (e.g., Hachen 1990; Roscigno, Garcia, Mong, and Byron 2007; Wilson 2005) or *solely* analyze layoffs (e.g., Elvira and Zatzick 2002; Wilson and McBrier 2005). These analyses, therefore, tell us little about firing itself because layoffs and firings are arguably different phenomena. For one, factors predicting layoffs are different than those influential in firings (Campbell 1997; Reid 2002). Second, whereas layoffs often affect large numbers of employees simultaneously (Bureau of Labor Statistics 2007) and are sometimes temporary events (White 1983); firings are frequently individual in nature and usually not temporary. As a result, it would be hasty to merely transfer knowledge about either aggregate job exits or layoffs to firing inequality.

In light of such gaps, this paper explores the process of gender based firing inequality in private sector employment. I begin with a review of the literature on gender based inequality in employment. Next, I draw from a unique dataset of 2,030 actual cases of employment discrimination filed by White and Black women in Ohio from 1986-2003. Analytically, I use descriptive trends and also examine 78 of these cases qualitatively. This multi-method strategy helps to illuminate connections between aggregate gender based firing discrimination trends and the intra-firm social processes that underlie them.

GENDER AND FIRING DISCRIMINATION: WHAT WE KNOW

Literature on gender based firing inequality is scarce (Peterson and Saporta 2004). However, the possibility of gender discrimination in firing contexts is important to consider given the conclusion of research on other forms of workplace inequality. For example, the literature confirms that women are disproportionately employed in care giving and service sector jobs and underrepresented in traditionally male jobs (Reskin and Roos 1990; Tomaskovic-Devey 1993). While the cause of this segregation is

debated, many studies suggest that women are queued into gender “appropriate” jobs by employer discrimination (Tomaskovic-Devey 1993; Kaufman 2002). At the base of this queuing are cultural stereotypes that women are passive, less competent, and weak until proven otherwise (Correll 2007; Herbert 1998; Kennelly 2002).

These overarching stereotypes provide a backdrop for statistical discrimination. Statistical discrimination theory suggests that employers make “rational” choices based on statistical evidence of productivity differences between groups (Baume and Fossett 2005). Although there is no consistent evidence that women are less productive than men (Tomaskovic-Devey and Skaggs 1999), employers may use their *perceptions* of inferior productivity among women (which they interpret as accurate statistics) to legitimize women’s dismissal from work (see Tomaskovic-Devey 1993).

To compound the problems that women in general face in the labor market, research highlights perceptions of pregnant women and mothers as being less committed to their jobs and more likely to miss work (Correll 2007; Cunningham and Macan 2007; Masser, Grass, and Nesic 2007). Such stereotypes are striking given evidence that motherhood actually *increases* commitment to work because of the economic and psychological benefits that work provides to mothers (Bielby and Bielby 1984; Noonan, Rippeyoung, and Glass 2007). Nonetheless, supervisors remain apprehensive about how the employee’s work will be covered during pregnancy leave; they question when or if they will return from leave; and they treat women like their pregnancy is deliberately meant to cause workplace hardships (Halpert and Burg 1997).

Issues surrounding maternity leave also present a purely economic motivation for the treatment of pregnant women at work. Pregnancy may be regarded as an economic

liability due to health insurance costs and sick leave requests (Edwards 1996). In sum, I expect that: *Employers will engage in statistical discrimination, drawing on stereotypes of alleged productivity issues to fire women workers.* I also expect that: *Employers will invoke economic justifications to rationalize the firing of pregnant women.*

Whether African American and White women uniformly experience these types of mistreatment in firing contexts remains an important question. Unfortunately, the few studies (e.g., Edwards 1996; Roscigno 2007) that address gender based firing discrimination are not devoted to the firing process itself. The goal of this study is to explore this process by investigating the role of stereotypes and financial considerations in gender based firing discrimination, keeping in mind potential variations by race.

DATA & ANALYTIC STRATEGY

My analysis is based on data collected from publicly available archived case files of the Ohio Civil Rights Commission (OCRC). I was granted access to an OCRC maintained quantitative dataset of all employment discrimination charges (N=60,726) filed within the state of Ohio from 1986 to 2003. The dataset includes variables that identify the charging party's race and sex, the harm incurred (e.g., firing), the basis of charge (e.g., gender), and the determination of the investigation. In addition, I was allowed access to rich qualitative case files. Each case, which includes between 20 to 120 pages, contains detailed employee and employer statements and witness testimonies to aid in the determination of the likelihood of discrimination.

My analysis is multi-method. I start with a base of 60,726 cases filed over 18 years. Since the paper specifically pertains to White and Black women who filed for discrimination in firing in the private sector on the basis of gender, I selected these cases

(N=7,334). Furthermore because it would be hasty to equate claims with verifiable discrimination, the data is further limited to a set that contains “serious” cases. Serious cases, which include cases where the preponderance of evidence suggests that discrimination was probable and those settled in the employee’s favor, are often viewed as a good representation of discrimination suits by legal scholars (Roscigno 2007). Selecting these cases, which are not substantially different than all firing claims (Figure 4), gives further support that the analysis is measuring discrimination itself rather than perceptions of discrimination. This results in 2,030 cases.

I then randomly sampled and content coded 78 (63 White women and 15 Black women) of these cases to shed light on the process of firing discrimination. After reading the available evidence, employee and employer responses were systematically categorized into seven and eight themes, respectively. Table 1 and Table 2 give a detailed account of how I arrived at these themes.

<INSERT TABLE 1& 2>

RESULTS

Aggregate Statistics: Race Differences in Gender Discrimination Rates

On average, African American women file serious cases of gender based firing discrimination at a rate three times higher than White women (see Figure 1). The rate gap is noticeably large, in part, because of the smaller population of African American women in the workforce (relative to White women). Nonetheless, these rates suggest that Black women may have heightened chances of gender based firing discrimination. Such statistics are surprising given the fact that Black women *and women in general* are segregated into gendered work contexts (see Reskin and Roos 1990). For example, Black

women are overrepresented as employees in nursing home facilities—establishments that are also overwhelmingly (82.5%) female (Equal Employment Opportunity Commission 2003). So, why in mostly female contexts do we see so much gender discrimination? The answer is seen when looking at qualitative narratives. Nearly half of all women in the sub sample (between 43-47%) noted that they were fired because they became pregnant or went on maternity leave (see Figure 2). Interestingly, gender discrimination does not always take the traditional male versus female form. Instead it is often a pregnant/non-pregnant dichotomy. And because pregnancy is inherently female it falls under gender discrimination, although women may be fired and replaced with other (non-pregnant) women. This finding highlights the importance of multi-method analyses. Figure 2 also displays the remaining processes of gender based discrimination. While it is certainly important to investigate the unique process in each category, sample size limitations and brevity narrow this paper's focus to the top three explanations: pregnancy discrimination, differential treatment based on performance, and retaliatory firing cases.

<INSERT FIGURE 2 HERE>

Don't expect this much for your next six kids: Pregnancy and Firing Discrimination

In line with prior research (Halpert and Burg 1997, Masser, Grass, and Nesic 2007), both male and female employers had negative attitudes toward pregnant women at work. Employers often stated that women in these cases were fired for “poor attendance” or “poor performance”—a trend noted in Figure 3. These justifications suggest the role of statistical discrimination in firing decisions and support the first expectation.

<INSERT FIGURE 3 HERE>

Take the case of Mary Lang. Ms. Lang, a white sales associate, was discharged the day after informing her employer that she was pregnant. Her employer stated that he had to let her go because “she was no longer dependable”. The day of her discharge, her employer attempted to have her sign a memo which outlined several concerns presumably in an effort to justify Mary’s discharge. Another employee, Stacy Wells, was fired because “customers did not want a woman in her condition working around them”. In a third case, Marlese Lewis, an African American waitress, was told that she had to be let go because her employer “could not afford another liability”. These three examples illustrate how, in line with statistical discrimination, employer views of pregnant women as less dependable and costly liabilities are used to legitimize firing them. Notably, in many cases pregnant employees were replaced by other (non-pregnant) women.

In line with the second hypothesis, cultural stereotypes about pregnancy are indeed compounded by direct financial concerns that employers have about maternity leave. One employer rather bluntly stated “I hope you don’t have any complications with this pregnancy”. This seemingly benign comment was found to have a cost savings undertone because pregnancy complications only extend maternity leave. A similar cost savings concern was illustrated in another case. After a meeting with her Vice President Jim Warren, Jennifer, a white purchasing agent maintains that Jim indicated...

that six weeks was too much time off for maternity leave. He further stated that I could have three weeks off and don't expect this much time off for your next six kids.

Tom (a white mid level manager) discusses Jennifer’s case in a signed affidavit.

When I told Jim that Jennifer was pregnant, he already knew. While I can’t remember his exact words, it was something like – Oh my God, I told you not to put her in that position – now she is in a critical position and she is going to have a baby... [And when termination was brought up] I told him that there were others I would prefer to lay off...there were three less essential people with less seniority... [but Jim responded] you have had your say. Larry (the owner) and I have reviewed your situation. These are your instructions and this is what I’m telling you to do.

Clearly in violation of fair employment policies the owners chose to fire Jennifer over less essential (non-pregnant) workers. Employers' complaints about too much time off during maternity leave demonstrate that pregnant women are regarded as financial burdens to firms who have to provide monetary support during these leaves. Together, these narratives add a new dimension to the penalties of motherhood. For one, employers fear that commitment and productivity will decrease after having a baby and feel compelled to fire women in this situation. Ironically, this perception persists despite a lack of evidence of productivity differences and contrary evidence that work commitment after child birth actually increases (Bielby and Bielby 1984; Noonan, Rippeyoung, and Glass 2007). Nonetheless, economic considerations join with these doubts of commitment to intensify the discriminatory firing of pregnant women (Edwards 1996).

As a female I wouldn't be able to perform my duties: Performance, Gender, and Firing

Figure 2 also highlights that over 20% of African American and White women report differential treatment in regards to performance as the justification for their termination. For example, Johanna Paxley a White security guard explains,

The reason given was he [white male supervisor] received a letter from the home office stating that as a female I would not be able to perform my duties due to a fifty pound weight restriction placed on my lifting and that I would not be able to lift a fire extinguisher...I have proven on two occasions that I can lift the fire extinguisher with no problems.

In a similar case, a husband and wife were hired simultaneously as Superintendents of a rental property. When the husband, Don Maple, decided to resign, his wife was subsequently fired. When the Don inquired if Sheila would be able to stay on, he was told "No way...what would she do if something happened?" In both examples, women were fired because of stereotyped expectations that they could not adequately perform "a man's job". Again, these patterns are consistent with statistical discrimination. Because

women on average are perceived to be less competent and poor performers (Correll 2007; Kennelly 2002), they are unjustly fired without a reasonable chance to prove their skills.

My job was in jeopardy because I had spoken out: Retaliation and Firing

A less identified factor in the discriminatory firing of women is a bi-product of sexist environments. In many instances, women bear these intolerable environments. But when women complain about sex discrimination, some employers become angry. Even though employers propose a range of alternative explanations, the timing of firing after complaints of discrimination suggests a retaliatory causal link that is hard to deny.

Consider the case of Melinda Watts. Melinda is an African American who was employed as a Manager for 13 years. Yet nearly one month after making complaints to the OCRC about unequal pay and jobs, Melinda was allegedly discharged for “speaking out of place”. In a similar case, Carla Berry a nurse’s aid was fired after she wrote a letter to the Executive Director stating that she was a victim of disparate treatment. She notes,

After the company received the letter, I was treated differently by everybody at the executive level, including the executive director. Less than two months later I was discharged. My performance had not declined and I was never given reason to believe my job was in danger of termination.

Here we see examples whereby employees are denied progressive disciplinary proceedings and terminated soon after employers are made aware that they have complained. Retaliation discrimination presents a particularly insidious “double edge sword”. Employees experience some form of prior inequality, only to be unjustly fired when they complain about it.

CONCLUSION

In conclusion, aggregate trends reveal that Black women face discrimination in firing at a rate three times higher than White women. But, the main advantage of this paper is that it

exposes the specific mechanisms by which employers differentially terminate female employees. Indeed, contemporary employers engage in covert practices to push women out of the workplace while attempting to maintain a lawful rational façade. They claim seemingly meritocratic justifications such as poor attendance and performance, but case files reveal otherwise. The vast majority of women were fired because of 1) unfairness in pregnancy/maternity leave, 2) performance related differential treatment, or 3) retaliation for making a prior complaint about discrimination. The aforementioned findings about firing discrimination yield three significant contributions. First, although we typically think of gender discrimination being a ‘male preferred over female’ phenomenon, the condition of pregnancy makes women equally at risk for termination in favor of other women. Given the sex segregated contexts of many types of employment, pregnancy discrimination studies should be of utmost importance to gender inequality scholars. Second, denoting that pregnancy/gender based firing discrimination stems from both statistical discrimination *and* direct financial considerations presents a new challenge to its solution. Finally, exploring the issues of performance related and retaliatory firing discrimination further enhances our knowledge of contemporary discrimination.

The above findings yield two practical recommendations. First, women should be especially mindful of three types of gender discrimination (pregnancy, differential treatment, and, retaliation). And because gender discrimination is not solely based on gender *per se*, this vigilance must occur even in predominantly female workplaces. Second, employers should implement formalized paid maternity leave policies and workshops that clarify to managers exactly what constitutes discrimination. These recommendations will serve the larger goal of creating discrimination free workplaces.

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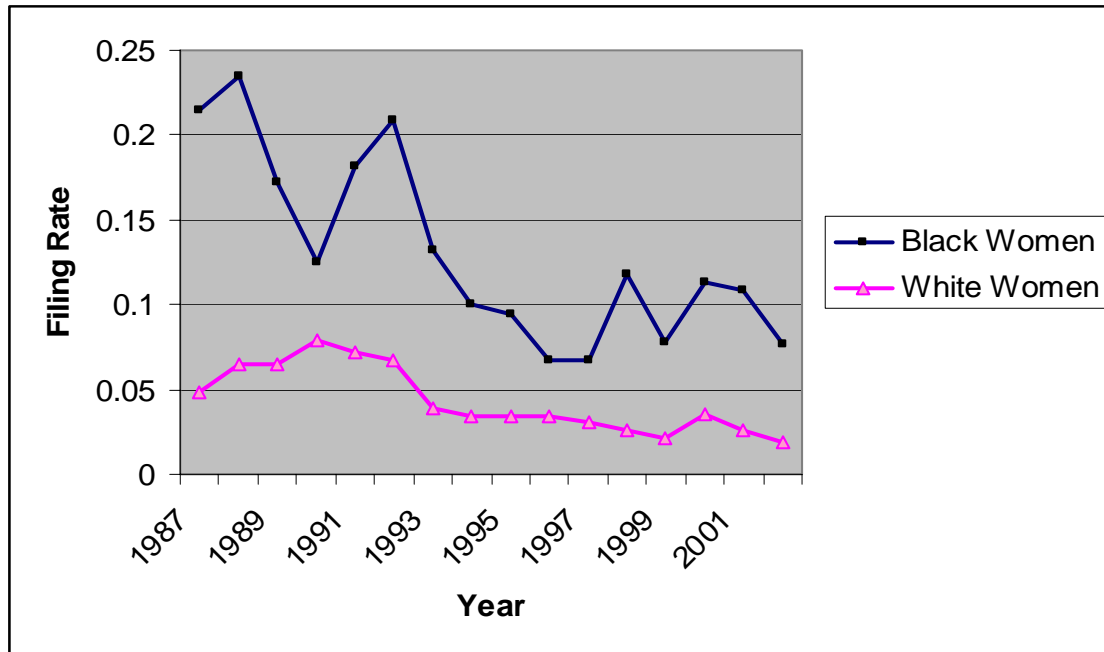
TABLE 1: DESCRIPTION OF HOW EMPLOYEE VIEWS WERE CATEGORIZED

Category	Basis for Categorization
Differential Treatment	
<i>Performance</i>	Employee used the term "differential treatment" on their charge form, provided a comparison group member, and/or identified unfair evaluation of their performance
<i>Behavior</i>	Same as above, except employee identified unfair evaluation of a verbal or physical confrontation
Pregnancy	Employee referred to "pregnancy" or "maternity" on their charge form and generally provided a non-pregnant comparison group member
Arbitrary	Blatant subjective explanations given to employees (e.g., "had to go to the bathroom too much")
Retaliation	Employee identified a prior complaint and its apparent connection to their firing
Downsizing	Employee was given a financial explanation for why they were being let go
Hostile Environment	Employee complained that the workplace environment was "hostile" on the charge form
Refused Sexual Advances	Employee identified the connection between denying their supervisor's sexual advances and their firing

TABLE 2: DESCRIPTION OF HOW EMPLOYER REASONS WERE CATEGORIZED

Category	Basis for Categorization
Violation of Company Policy	Employer identified a specific policy which led to the employee's dismissal
Poor Performance	Employer stated "poor performance" as their justification for termination or named performance related issues as the main cause
Poor Attendance	Same as above except "poor attendance" was stated
Insubordination	Employer specifically used the word "insubordination" in their statement to the OCRC
Simple Denial	Employer only denied the employee's claims without presenting a specific reason for the termination
Employee Quit	Employer stated that the employee quit before being formerly fired
Downsizing	Employer identified a financial reason for why they had to terminate the employee
OCRC Lacks Jurisdiction	Employer challenged the jurisdiction of the OCRC assuming that because of their size or private sector status they were not subject to EEO law

**FIGURE 1: RATES OF “SERIOUS” GENDER BASED FIRING DISCRIMINATION CASES
1987-2002 (N= 1949)***



*Filing rate is per 1000 workers. The less than 1% attrition from the original sample is due to two sources.
1) Twenty nine cases had missing dates. 2) Fifty two cases were dropped because data collection in 1986 and 2003 was started and ended mid year. So rates for these years would not be accurate.

**FIGURE 2: EMPLOYEE REASON FOR FIRING DISCRIMINATION IN GENDER CASES
(N=78)**

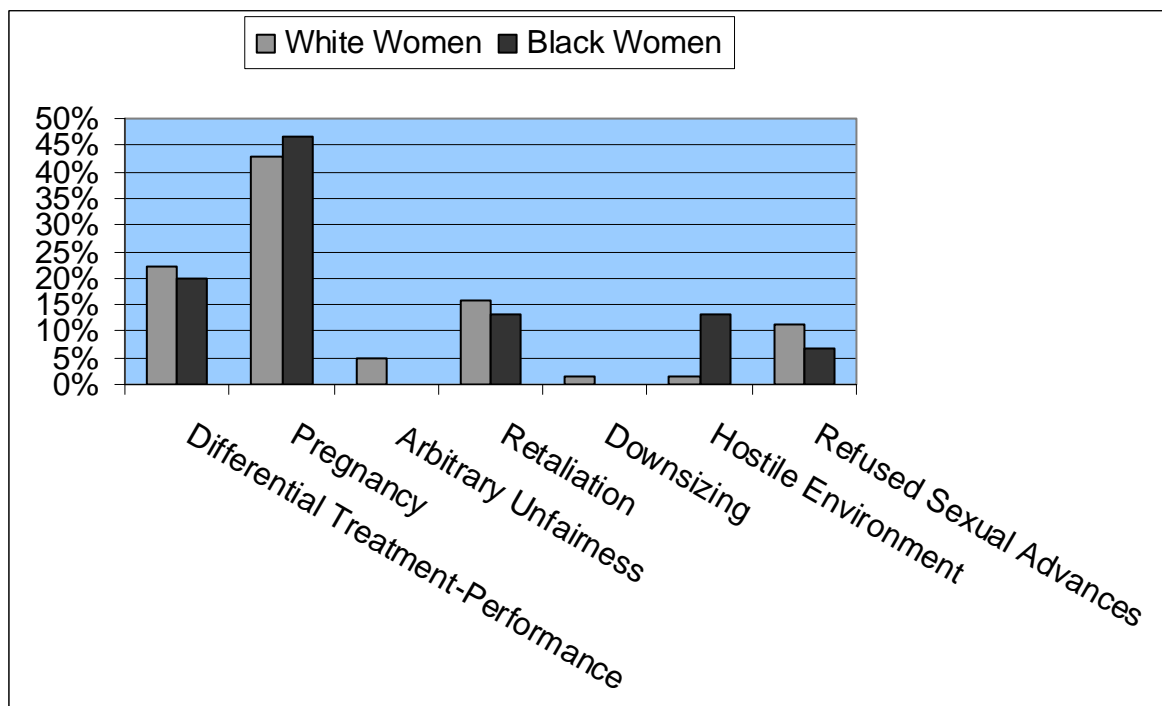


FIGURE 3: EMPLOYER REASON FOR FIRING DISCRIMINATION IN GENDER CASES
(N=78)

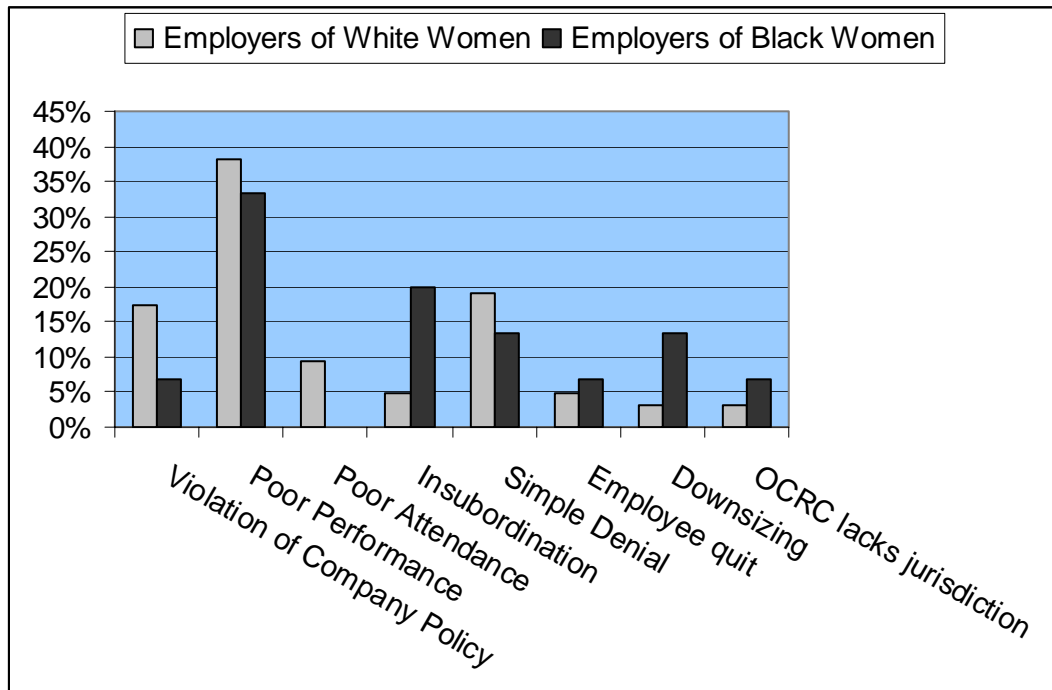


FIGURE 4: RATES OF “ALL” GENDER BASED FIRING DISCRIMINATION CASES
1987-2002 (N= 7010)

